

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN MARIE EDWARD,

Plaintiff-Appellant,

v

WEST BRANCH-ROSE CITY AREA SCHOOLS,

Defendant-Appellee,

and

LEE WARD,

Defendant.

UNPUBLISHED

August 27, 2002

No. 224739

Ogemaw Circuit Court

LC No. 98-652404-NZ

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Plaintiff, a secretary who formerly worked for an elementary school principal, sued defendant school district under the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*, alleging that she was forced by defendant to change her position to an inferior one after she filed a police report accusing the principal of assault. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm.

We review a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454, 455-456, n 2; 597 NW2d 28 (1999); *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). The court is not allowed to assess credibility or determine facts when deciding a motion under MCR 2.116(C)(10). *Downey v Charlevoix Co Bd of Co Road Comm'rs*, 227 Mich App 621, 626; 576 NW2d 712 (1998).

In order to make a prima facie case under the WPA, plaintiff was required to show that (1) she was engaged in protected activity under the act, (2) defendant discharged or otherwise

discriminated against her as defined in the act, and (3) there was a causal connection between the protected activity and the discharge or discrimination. *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 399; 572 NW2d 210 (1998). The act applies to reports made against a coworker, not just an employer. *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 74-75; 503 NW2d 645 (1993). Protected activity under the act includes reporting to a public body a violation of a law. MCL 15.362; *Chandler, supra*.

A plaintiff is precluded from recovering under the act when the employee acts in bad faith. *Shallal v Catholic Social Services*, 455 Mich 604, 621; 566 NW2d 571 (1997). “The primary motivation of an employee pursuing a whistleblower claim ‘must be a desire to inform the public on matters of public concern, and not personal vindictiveness.’” *Id.*, quoting *Wolcott v Champion Int’l Corp*, 691 F Supp 1052 (WD Mich, 1987). Where no reasonable juror could conclude that the plaintiff’s actions were taken out of an altruistic motive of protecting the public, summary disposition is appropriate. *Id.* at 622. There is no indication that the Legislature intended the WPA to be used as an offensive weapon by disgruntled employees. *Id.*

Here, we must decide whether plaintiff presented sufficient evidence to raise a question of fact as to whether she acted in good faith in filing the criminal complaint against her principal. The evidence showed that plaintiff and her principal, along with two other school employees, one of whom was a union representative, were at a meeting to discuss a written reprimand issued to plaintiff concerning accounting problems related to her bookkeeping when the complained of action occurred. Plaintiff testified at her deposition that at a particularly tense moment during the meeting, the principal partially rose from his chair, placed his hands on the table, leaned forward, and yelled at her. He then sat back down and began talking in a calm voice. Subsequently, plaintiff filed a complaint based on this conduct with the police department.

Given plaintiff’s deposition testimony, we find that no basis exists for a reasonable person to file a criminal complaint for the purpose of protecting the public. The principal did not attempt to commit a battery or do an unlawful act that would place a person in reasonable apprehension of receiving an immediate battery. *People v Reeves*, 458 Mich 236; 580 NW2d 433 (1998). Where two other people were present, including a union representative, and from plaintiff’s description of the principal’s actions, one cannot conclude that plaintiff had a reasonable apprehension of receiving an immediate battery from her principal. Plaintiff failed to present evidence that would raise a question of fact regarding her good faith in filing the complaint with police.

Having determined that the trial court properly granted summary disposition, we need not address plaintiff’s remaining arguments.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O’Connell